

ILLINOIS POLLUTION CONTROL BOARD
July 19, 1990

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 90-64
) (Enforcement)
JEFFREY KILGUS, d/b/a INDIAN)
CREEK MATERIALS COMPANY)
)
Respondent.)

APPEARANCE FOR THE COMPLAINANT BY PAMELA M. CIARROCCHI, ASSISTANT ATTORNEY GENERAL.

APPEARANCE FOR THE RESPONDENT BY STEPHEN WEEKS, ESQ.

OPINION AND ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board upon a five count complaint filed April 19, 1990, on behalf of the Illinois Environmental Protection Agency ("Agency"), by and through its attorney, Neil F. Hartigan, Attorney General of the State of Illinois, against Jeffrey Kilgus, d/b/a/ Indian Creek Materials Company (Kilgus) located in Fairbury, Livingston County, Illinois. The complaint alleges that Kilgus has violated Sections 12(a), (b), (d) and (f) of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1989, ch. 111½, pars. 1001, et. seq., and 35 Ill. Adm. Code 404.101, 403.102, 403.104 and 302.203. of the Board's rules and regulations.

Hearing on this matter was held June 20, 1990 in Pontiac, Livingston County, Illinois. At hearing, the parties submitted a Stipulation and Settlement Agreement, executed by the parties. The Stipulation sets forth facts pertaining to the nature, operations, and circumstances surrounding the claimed violations. Kilgus admits to Counts I, II, III, and V which include past violations of Sections 12(a), (b), (d) and (f) of the Act and 35 Ill. Adm. Code 403.102, 403.104 and 302.203. Kilgus neither admits nor denies the allegations of Count IV of the complaint which includes violations of Section 12(b), of the Act and 35 Ill. Adm. Code 404.101 and agrees to pay a civil penalty of three thousand five hundred dollars (\$3,500). Kilgus further agrees to cease and desist from the alleged violations.

The transcript of the hearing includes a summary of the stipulation by the Complainant. The summary includes a listing of the violations admitted to as "Section 12A of the Act, Section 12C of the Act, Section 12F of the Act, Section 12B of the Act" (R. p. 5) and certain Board regulations. Neither the complaint

nor the stipulation reference a violation of "Section 12C" of the Act; although both include Section 12(d) of the Act. The Respondent was present at hearing and did not object to the summary of the stipulation as given. The Board finds that the written documents are controlling in this situation.

The Board finds the Settlement Agreement acceptable under 35 Ill. Adm. Code 103.180. This Settlement Agreement in no way affects respondent's responsibility to comply with any federal, state or local regulations, including but not limited to the Act and the Board's pollution control regulations.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

- 1.) The Board hereby accepts the Stipulation and Settlement Agreement executed by the Illinois Environmental Protection Agency) and Jeffrey Kilgus, d/b/a/ Indian Creek Materials Company concerning Kilgus's operations located in Fairbury, Illinois, Livingston County. The Stipulation and Settlement Agreement are incorporated by reference as though fully set forth herein.
- 2.) Kilgus shall pay the sum of three thousand five hundred dollars (\$3,500) within 30 days of the date of this Order. Such payment shall be made by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund, and shall be sent by First Class mail to:

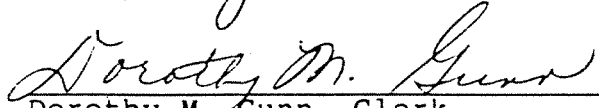
Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276
- 3.) Kilgus shall also write its Federal Employer Identification Number or Social Security Number on the certified check or money order.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1989, ch. 111 $\frac{1}{2}$, par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17th day of July, 1990, by a vote of 4-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board